

CHAPTER 2

OVERVIEW OF THE BILL

2.1 This chapter briefly outlines the main provisions of the Bill.

Schedule 1 – Amendment of the Crimes Act 1914

Item 1

2.2 Item 1 inserts a definition of 'bail authority' into subsection 3(1) of the Crimes Act (section 3 of the Crimes Act is the interpretation section).

2.3 The inserted definition states that 'bail authority' means 'a court or person authorised to grant bail under a law of the Commonwealth, a State or a Territory'. This definition is the same as the definition which is currently in the Crimes Act at subsection 15AA(5). The EM states that the definition is being moved to the general interpretation section because it will not only be used in section 15AA.

Item 2

2.4 Item 2 repeals the existing definition of the term 'bail authority' from subsection 15AA(5).

Item 3

2.5 Item 3 inserts new section 15AB which requires a bail authority, when considering granting bail or imposing bail conditions on alleged offenders in relation to Federal offences, to consider the potential impact of the bail authority's actions on victims and potential witnesses. The EM states that this amendment gives primacy in the bail process to the protection of victims and potential witnesses, and will ensure that a bail authority takes the interests of such persons into account in cases that fall within the scope of new section 15AB.

2.6 New section 15AB also requires that, where victims and potential witnesses are living in or located in a remote community, the bail authority must take this into account when considering granting bail. The EM explains that this is because remote communities are typically small and isolated, and victims and potential witnesses in such communities face higher risks than others when alleged offenders are released into their communities on bail. The purpose of the amendment is to ensure that bail authorities give appropriate weight to the special circumstances of victims and potential witnesses in remote communities.¹

1 pp. 2-3.

2.7 The term 'remote community' in new subsection 15AB(1)(b) is not defined. The EM states that it will be a matter for the bail authority to determine on the facts of the case whether an alleged victim or potential witness is located in a remote community.²

2.8 New subsection 15AB(1)(b) prohibits a bail authority from taking into account any form of customary law or cultural practice when considering whether to grant bail to an alleged offender. According to the EM, this amendment 'helps establish the principle that neither customary law nor cultural practice can be used to mitigate an alleged offender's criminal behaviour – and on that basis allow an alleged offender to be granted bail'.³

Item 4

2.9 Item 4 omits the term 'cultural background' from paragraph 16A(2)(m) of the Crimes Act. The effect of this amendment will be that a court will no longer be expressly required to consider a person's 'cultural background' when passing sentence on that person for committing a Federal offence.⁴

2.10 The EM notes that, subject to the amendment to be made by Item 5, a court will still be able to take into consideration the 'cultural background' of an offender, in sentencing that offender, should it wish to do so. However, the amendment 'removes an unnecessary emphasis on the 'cultural background' of convicted offenders'.⁵

Item 5

2.11 Item 5 inserts new subsections 16A(2A) and (2B) into the Crimes Act. New subsection 16A(2A) expressly prohibits a court from accepting a 'customary law or cultural practice' as an excuse or justification when sentencing a person for having committed a Federal offence.

2.12 The EM explains that Item 5 enacts COAG's decision, made on 14 July 2006, that no 'customary law or practice' can provide a 'reason for excusing, justifying, authorising, requiring or rendering less serious the criminal behaviour to which the offence relates'.⁶

2 p. 3.

3 p. 3.

4 EM, p. 3.

5 p. 3.

6 p. 3.

Item 6

2.13 Items 1 to 3 will apply, immediately upon the Bill's commencement, and therefore will apply in relation to persons who have already committed offences but who have not yet been granted bail.

2.14 Items 4 and 5, which relate to sentencing, will apply from the day after Royal Assent is received, though only in relation to offences committed after the Bill's commencement.

